IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 247 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

COMMISSIONER OF INCOME-TAX

Versus

PANCHAN SHAMJI KADVA PATEL SEVA SAMAJ

Appearance:

1. INCOME TAX REFERENCE No. 247 of 1993
MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 18/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

At the instance of the revenue, the following question of law is referred for the opinion of this

Court:-

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the donations received by the assessee trust towards Makan Badhkam Fund did not constitute income of the assessee trust ?"

2. The assessee is a Public Charitable Trust. The assessment years involved are 1986-87 and 1987-88 for which the relevant accounting years were S.Ys. 2041 and 2042 respectively.

3. The assessee had received donations of Rs.37,681/- and Rs.43,410/- in the accounting years relevant to the above mentioned two assessment years towards specific fund that is known as 'Makan Badhkam Fund". The Income-tax Officer treated these amounts as income of the assessee.

4. In the appeals filed by the assessee, the Commissioner of Income-tax (Appeals) held that since the amounts had been received with specific directions in Makan Badhkam Fund, the amounts should be regarded to have received towards corpus of the trust and would not constitute income of the assessee. He relied on the decision of the Tribunal in the case of Swetamber Murtipujak Topogachha Jain Sangh, Jamnagar vs. ITO. The department came in appeals before the Tribunal. The Tribunal also relied on the said decision and dismissed the appeals of the department.

5. On the above facts, at the instance of the revenue the above question is referred to us for our opinion.

6. Heard Mr Manish R Bhatt, the learned senior standing counsel appearing for the applicant-revenue. No one appears on behalf of the respondent-assessee though the notice is duly served.

7. The issue involved in the present reference is squarely covered by our decision in the case of Commissioner of Income-tax, Rajkot vs. Shri Sthanakvasi Vardhman Vanik Jain Sangh, Jamjodhpur being Income-tax Reference No. 73 of 1993 which was decided by us today. For the reasons stated therein and the view taken by us therein, we are of the view that the Tribunal was right in holding that the donations received by the assessee-trust towards Makan Badhkam Fund did not constitute income of the assessee-trust. We, therefore,

answer the question referred to us in the affirmative i.e. in favour of the assessee and against the revenue.

8. The reference is disposed of accordingly with no order as to costs.

(M.S. Shah, J.) (K.A. Puj, J.)

sundar/-